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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,326	02/14/2002	Raphael Louis Mangin	CM2502	8690

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EXAMINER

FIDEI, DAVID

ART UNIT PAPER NUMBER

3728

DATE MAILED: 10/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/075,326

Applicant(s)

MANGIN, RAPHAEL LOUIS

Examiner

David T. Fidei

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,9,10 and 17-26 is/are pending in the application.
4a) Of the above claim(s) 17-26 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1,4 and 9 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Steiner (Patent no. 2,170,540). In figures 1 and 2 a container having a trapezoidal shape can be said to be formed with an interior area “for” housing a plurality of vertically stacked substrates in as much as is claimed where the container comprising top 4 that is longer in one dimension than a bottom 5 side walls opposing each other, front 3 and back 2 side wall opposing each other. The left and right side walls are not numbered or shown by Steiner. It appears from figures 1 and 2 that the angle between the front side wall 3 and the bottom side wall 5 is well between the 95° to 160° limitation. Also, a dispensing opening is located at the intersection between the top side wall 4 and front side wall 3.

As to claim 10, a dispensing opening 11 further extends vertically downward as defined by the gap between the top and bottom edge of the opening shown in figure 2.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 9 and 10 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Steiner (Patent no. 2,170,540). In figures 1 and 2 a container having a trapezoidal shape can be said to be formed with an interior area "for" housing a plurality of vertically stacked substrates, in as much as is claimed, where the container comprising top 4 and bottom 5 side walls opposing each other, front 3 and back 2 side wall opposing each other. The left and right side walls are not numbered or shown by Steiner. It appears from figures 1 and 2 that the angle between the front side wall 3 and the bottom side wall 5 is well between the 95° to 160° limitation.

To the extent that the angle between the front side wall 3 and the bottom side wall 5 is not between the 95° to 160° limitation recited in claim 1, it would have been an obvious matter of design choice to construct the angle more obtuse or acute, since such a modification would have involved a mere change in the dimension of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In *re Rose*, 105 USPQ 237 (CCPA 1955). Also, it has been held that where the only difference between the prior art device and the claimed device was a recitation of relative dimensions, the claimed device was not patentably distinct from the prior art device, *Gardner v. TED Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. Denied, 469 U.S. 830, 2325 USPQ 232 (1984), see M.P.E.P. 2144.04 (IV).

5. Claims 1, 4, 9 and 10 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Crosby et al (Patent no. 5,363,959). In figures 1-5 a container having a trapezoidal shape can be said to be formed with an interior area "for" housing a plurality of vertically stacked substrates, in as much as is claimed, including a dispensing opening 50 where the container comprising top 51 that is longer in one dimension than a bottom 20 side walls opposing each other, front 12 and back 45 side wall opposing each other, see figure 5. Left and right side walls 70 are disclosed where it is apparent the angle between the front side wall 12 and the bottom side wall 20 is greater than 90 degrees.

To the extent that the angle between the front side wall 12 and the bottom side wall 20 is not between the 95° to 160° limitation recited in claim 1, it would have been an obvious matter of design choice to construct the angle more obtuse or acute, since such a modification would have involved a mere change in the dimension of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). Also, it has been held that where the only difference between the prior art device and the claimed device was a recitation of relative dimensions, the claimed device was not patentably distinct from the prior art device, Gardner v. TED Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. Denied, 469 U.S. 830, 2325 USPQ 232 (1984), see M.P.E.P. 2144.04 (IV).

As to claim 4 the comprises a single piece of material as shown in figure 1.

As to claim 10, the opening 50 extends vertically downward at least as defined by the thickness of the top panel 51.

6. Claims 1, 4 and 9 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Morck (Patent no. 1,931,293). In figures 1-4 a container having a trapezoidal shape can be said to be formed with an interior area "for" housing a plurality of vertically stacked substrates, in as much as is claimed, including a dispensing opening 12 where the container comprising top 11 that is longer in one dimension than a bottom 24 side walls opposing each other, front 14 and back 18 side wall opposing each other, see figure 3. Left and right side walls 21 are disclosed where it is apparent the angle between the front side wall 14 and the bottom side wall 24 is greater than 90 degrees.

To the extent that the angle between the front side wall 12 and the bottom side wall 20 is not between the 95° to 160° limitation recited in claim 1, it would have been an obvious matter of design choice to construct the angle more obtuse or acute, since such a modification would have involved a mere change in the dimension of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). Also, it has been held that where the only difference between the prior art device

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and the claimed device was a recitation of relative dimensions, the claimed device was not patentably distinct from the prior art device, *Gardner v. TED Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. Denied, 469 U.S. 830, 2325 USPQ 232 (1984), see M.P.E.P. 2144.04 (IV).

As to claim 4 the comprises a single piece of material as shown in figure 1.

Claim Objections

7. Claim 9 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 9 appears to only recite subject matter already contained in claim 1.

Response to Arguments

8. Applicant's arguments with respect to claims 1, 4, 9 and 10 have been considered but are moot in view of the new ground(s) of rejection. While the present amendment distinguishes over U.S. 4,706,844, it is not agreed the subject matter is novel and not obvious over the prior art as explained above.

The container is recited as "for" housing a plurality of vertically stacked substrates. In order to further limit the claim there must be some distinction based upon the intended use recited. "However, in apparatus, article, and composition claims, intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art, see M.P.E.P. § 2111.02 THE INTENDED USE MAY FURTHER LIMIT THE CLAIM IF IT DOES MORE THAN MERELY STATE PURPOSE OR INTENDED USE. The examiner can see no structural differences between the claimed invention and the prior art based upon the intended use recited where the container is for" housing a plurality of vertically stacked substrates biased toward the front side wall.

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Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the Examiner concerning the merits of the claims should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


David T. Fidei
Primary Examiner
Art Unit 3728

dtf
August 8, 2005